

SPECIAL PROVISIONS

CITY OF SAN JOSE
San Jose, California

DEPARTMENT OF PUBLIC WORKS

SPECIAL PROVISIONS

FOR THE **TRAVELER INFORMATION CENTER**
SPECIFICATIONS AND PLANS

The work embraced herein shall be done in accordance with the City of San Jose Standard Specifications (July 1992) and the City of San Jose Standard Details (July 1992) insofar as the same may apply and in accordance with the following special provisions.

AMENDMENTS TO THE JULY 1992 STANDARD SPECIFICATIONS

Section 1 of the Standard Specifications (page 1-6) shall have the following paragraph added:

1-1.278 Partnering. - The development of team-based relationships between the Contractor and City in which: (1) trust and open communications are encouraged and expected from participants, (2) parties address and resolve issues and problems promptly and at the lowest possible level, (3) parties seek to develop solutions that are agreeable and meet the needs of everyone involved, (4) all parties have identified common goals for the partnerships and at the same time are aware of and respect each other's goals and values, and (5) parties seek input from each other in an effort to find better solutions for the problems and issues at hand, thus creating synergy in the relationship that fosters cooperation and improves the productivity of the partnership. The term is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Contractor.

Section 2-1.095 of the Standard Specifications (pages 2-4 and 2-5) shall be revised to read as follows:

2-1.095 Relief of Bidders. - After the time set for the opening of bids, no bidder shall be relieved of a bid, unless the City consents, and there shall be no change made in any bid because of a mistake. However, if such relief is not granted and the bid guarantee declared forfeit, the bidder may bring an action against the City in a court of competent jurisdiction in Santa Clara County for the recovery of the amount forfeited, without interest or costs.

The complaint shall be filed, and summons served on the Director of Public Works of the City of San Jose, within 90 days after the opening of the bid; otherwise, the action shall be dismissed.

To be relieved of its bid without forfeiture of its bid security, the bidder shall establish to the satisfaction of the City, determined in its sole and absolute discretion, that:

- (1) A mistake was made.
- (2) The Contractor gave the City written notice within five working days after the opening of the bids of the mistake, specifying in detail in the notice how the mistake occurred.
- (3) The mistake made the bid materially different than the Contractor intended it to be.
- (4) The mistake was made in filling out the bid and not due to an error in judgment or to carelessness by the Contractor in inspecting the site of the work, or in reading the plans or specifications.

Other than the above described notice to the City, no claim is required to be filed by the bidder before bringing a legal action against the City under this Section to recover a forfeited bid guarantee.

A bidder who claims a mistake and is relieved of its bid or who forfeits its bid guarantee shall be prohibited from participating in further bidding on the contract for the public work on which the mistake was claimed or security forfeited.

Section 2-1.10 of the Standard Specifications shall be revised to read as follows:

2-1.10 Disqualification of Bidders. – The City may disqualify a bidder and reject the bidder's bid for any one or more of the following causes:

1. The bidder is barred from bidding on City projects under the provisions of Chapter 4.10 of the San Jose Municipal Code.
2. More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names is received; all such proposals will not be considered.
3. Evidence of collusion among bidders.
4. Lack of competency as revealed by any financial statement, as may be required by the special provisions, or by experience or plant and equipment statements submitted.
5. Lack of responsibility as shown by past work on any Public Works project for the City or any other public entity judged from the standpoint of workmanship and/or progress.
6. Incomplete work on any Public Works project for the City or any other public entity which, in the judgment of the City, might hinder or prevent the bidder from promptly completing additional work if awarded.
7. Being in arrears on any existing Public Works contract for the

City or any other public entity, in litigation with the City, or having defaulted on a previous contract with any public entity.

8. Failure of the bidder to have a valid Contractor's license in the class specified in the Notice to Contractors at the time of bid opening, except as provided for projects where federal funds are involved as specified in Section 7-1.01.
9. Failure of the bidder to provide prices for all items in the proposal, including alternatives, or submitting an incomplete or otherwise non-responsive proposal.
10. The bidder has engaged in any activity constituting grounds for debarment under the provisions of Section 4.10.355 of the San Jose Municipal Code.
11. Any other ground which the Engineer determines would significantly impair the ability of the bidder to perform the proposed work. In making this determination, the Engineer may consider, without limitation, items such as any previous or current prevailing wage violations by the bidder, the number of stop notices on previous public works projects performed by the bidder, and the existence of past or current agreements with other public entities to not bid on public works projects.

Section 2-1.14 of the Standard Specifications (page 2-7) shall be revised to read as follows:

2-1.14 Addenda and Interpretations. – Every request for interpretation shall be in writing addressed to the Director of Public Works, Attn: Dale Burrious, Project Manager, City Facilities Architectural Services Division, 200 East Santa Clara Street, Sixth Floor, San Jose, CA 95113-1905, and to be given consideration must be received at least 7 days prior to the date fixed for the opening of bids.

Section 3-1.01 Award of Contract of the Standard Specifications (page 3-1) shall be revised as follows:

3-1.01 Award of Contract - The City will compare all proposals on the basis of the Engineer's Estimate of the quantities of work to be done.

The City, in its sole discretion, reserves the right to reject any or all proposals. If the City awards the contract, the award will be to the lowest responsive and responsible bidder whose proposal complies with all the requirements prescribed. If two (2) or more bids are the same and the lowest, the City may accept either bid it chooses in its sole discretion.

Depending upon the circumstances, the rejection of any or all proposals, or

the award of a proposal, may be done by either the City Council or the Director of Public Works.

3-1.01A Timing of Award - If the City awards the contract, it will award the contract no earlier than five (5) working days after the opening of the proposals and no later than ninety (90) calendar days after the opening of the proposals.

If the lowest responsible bidder refuses or fails to execute the contract, the City may award the contract to the second lowest responsive and responsible bidder. Such award, if made, will be made within 105 calendar days after the opening of the proposals. If the second lowest responsible bidder refuses or fails to execute the contract, the City may award the contract to the third lowest responsive and responsible bidder. Such award, if made, will be made within 120 calendar days after the opening of the proposals. The Department of Public Works may proceed in like manner until the Director either finds a responsible and responsive bidder willing to be awarded the contract or determines that it is not in the best interest of the City to proceed further.

The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the Director and the bidder concerned.

3-1.01B Notice of Intended Award - If the City intends to award a contract, the City will provide each bidder by hand delivery, fax or e-mail with a written notice indicating to which bidder it intends to award the contract. The City also will post this notice on the Public Works Bid Hotline, along with results of the bid.

3-1.01C Protest of Bid Award - A bidder may protest the City's proposed award of a contract. A protesting bidder shall submit its protest in writing. The protest shall provide a full and complete statement specifying in detail the ground(s) of the protest and the facts supporting the protest.

A protesting bidder shall deliver its written protest to the project manager at the address shown on the front cover of the bid specifications on or before 5 p.m. of the fifth working day following the day upon which the City issued the notice described in Section 3-1.01B.

The procedure and time limits set forth in this section 3-1.01C are mandatory and the bidders' sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

Section 4-1.03 of the Standard Specifications (page 4-2) shall be revised to read as follows:

4-1.03.1 Cost Determination. – Total cost of each and every change order shall be the sum of labor costs, material costs, equipment rental costs and specialist costs as defined in Section 9, “Measurement and Payment”. This limit applies in all cases of claims for extra work, whether calculating contract modifications, RFPs, or calculating claims of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. No other costs, including special damages of any type, arising out of or connected with the performance of extra work, of any nature, may be recovered by Contractor.

4-1.03.1(A) Overhead and Profit – The following constitutes charges that are included in overhead for all contract modifications, including force account work:

- (a) Drawings: filed drawings, shop drawings, etc., including submissions of drawings.
- (b) Routine field inspection of work proposed.
- (c) General superintendence.
- (d) General administration of Change Orders.
- (e) Computer services.
- (f) Reproduction services.
- (g) Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries.
- (h) Janitorial services.
- (i) Temporary on-site facilities such as offices, telephones, plumbing, electrical (power, lighting), platforms, fencing, etc.
- (j) Home office expenses.
- (k) Insurance and bond premiums.
- (l) Procurement and use of vehicles and fuel used coincidentally in base bid work.
- (m) Surveying and layout work.
- (n) Estimating.
- (o) Protection of work.
- (p) Final clean-up.
- (q) Other incidental work.

Overhead and profit on labor for extra work shall not exceed a total of 15 percent. Overhead and profit on materials for extra work shall not exceed a total of 15 percent. Overhead and profit on equipment rental for extra work shall not exceed a total of 15 percent. When extra work is performed by a first tier subcontractor, Contractor shall receive a five (5) percent markup on subcontractors’ total costs of extra work.

4.1-03.1(B) Taxes. – All applicable taxes shall be included.

4-1.03.1(C) Owner Operated Equipment. – When owner-operated equipment is used to perform extra work, Contractor shall be paid for equipment and operator as follows:

- (a) Payment for equipment will be made in accordance with Section 9-1.03A, "Equipment Rental".
- (b) Payment for cost of labor will be made at not more than rates of such labor established by collective bargaining agreements for type of workers and location of work, whether or not owner-operator is actually covered by such an agreement.

4-1.03.1(D) Work Performed by Special Forces or Other Special Services. –

When Owner and Contractor, by agreement, determine that special service or item of extra work cannot be performed by forces of Contractor, or those of any subcontractors, service or extra work item may be performed by specialist. Invoices for service or item of extra work on basis of current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with established practice of special service industry to provide complete itemization. In those instances wherein Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from Site, charges for that portion of extra work performed in such facility may, by agreement, be accepted as a specialist billing. Owner must be notified in advance of all off-site work. To specialist invoice price, less credit to Owner for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added fifteen percent (15%) in lieu of the percentages provided in Section 9-1.03A "Work Performed by Contractor."

Section 4-1.03A of the Standard Specifications (page 4-2), the first paragraph shall be deleted and replaced with the following:

4-1.03A – Procedure and Protest. – The City may issue a directed change order to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in a directed change order, the Contractor shall submit a written protest to the City pursuant to the procedures and requirements of Section 9-1.04, entitled "Notice of Potential Claim." If the Contractor does not submit a written protest pursuant to the procedures and requirements of Section 9-1.04, then the City will make payment as set forth in the directed change order and such payment shall constitute full compensation for all work included therein or required thereby. Such unprotected directed change orders will be considered as executed change orders as that term is used in Sections 4-1.03B to 4-1.03D inclusive.

Section 4-1.03E of the Standard Specifications (page 4-5) shall be revised to read as follows:

4-1.03E Revocable Contract Items. - Items noted as "Revocable" in the Proposal may be deleted entirely or in part or added to at the sole discretion of the

City. The provisions of Section 4-1.03B, "Increased or Decreased Quantities", shall not apply to entire or partial deletion of or addition to Revocable items.

Section 5 of the Standard Specifications (page 5-12) shall have the following paragraphs added:

5-1.17 Partnering. - The City and Contractor will use good faith efforts to promote the formation of a successful Partnering relationship in order to effectively complete the Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a Partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

The City and Contractor will engage in either Formal Partnering or Informal Partnering, depending upon the size of the project.

5-1.17A Formal Partnering. – In Formal Partnering the City and the Contractor implement the Partnering relationship through at least one pre-construction partnering workshop conducted by an independent facilitator. The purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. The City and Contractor may participate in additional facilitated workshops during the life of the project as they mutually agree is necessary and appropriate.

For all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$10 million or more, the City and Contractor shall participate in Formal Partnering.

For all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$1 million or above but less than \$10 million dollars, the Contractor may elect to require the parties to participate in Formal Partnering. The Contractor shall elect Formal Partnering by submitting a request in writing to the Engineer after approval of the Contract.

The scheduling of a partnering workshop, selection of the partnering facilitator and workshop site, and other administrative details shall be as agreed to by both parties. The parties shall use good faith efforts to schedule the initial, pre-construction partnering workshop and to select the facilitator for the workshop as soon as reasonably possible following award of the Contract where Formal Partnering is mandatory or as soon as reasonably possible following a Contractor's election to require Formal Partnering for all other projects.

The costs of Formal Partnering involved in providing the pre-construction partnering workshop, any subsequent, additional partnering workshops, and the facilitator for the partnering workshops shall be borne equally by the City and

Contractor. These costs may be provided elsewhere in this Contract either as an allowance item or a specific bid item. If not, then the Engineer may issue a change order in the amount of one-half of the estimated cost of the facilitator and the partnering workshops.

The division of cost for the facilitator and partnering workshops will be made by determining the cost in conformance with the provisions in Section 9-1.03B, "Work Performed By Special Forces or Other Special Services," of the Standard Specifications, and paying to the Contractor one-half of that costs, except no markups will be allowed.

All other costs associated with Formal Partnering will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefor.

5-1.17B Informal Partnering. In Informal Partnering the City and the Contractor will implement the Partnering relationship through partnering discussions that are not conducted by an independent facilitator. The City and Contractor may participate in additional unfacilitated partnering meetings during the life of the project as they mutually agree is necessary and appropriate.

The City and Contractor will engage in informal partnering as follows: (1) on all projects in which the Engineer's estimate for the entire project prior to advertising for bids is below \$1 million, and (2) on all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$1 million or above but less than \$10 million and the Contractor has not elected Formal Partnering.

Section 7-1.01A (4) of the Standard Specifications (page 7-5) shall be revised to read as follows:

7-1.01A (4) Labor Nondiscrimination. - Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

Section 7-1.04 Permits and Licenses of the Standard Specifications (page 7-14) shall have the following paragraph added:

"The Contractor shall defend, indemnify, and hold harmless the City, its employees, and its agents from all legal claims, losses, actions in law or equity civil and/or criminal, arising from any and all acts, omissions, or negligence of the

Contractor in violation of any permit or license issued.”

Section 7-1.22 Provisions of Law and Venue of the Standard Specifications (page 7-30) shall have the following paragraph added:

“All depositions, document production, mediations, arbitrations, and any other meetings will take place in the City of San Jose.”

Section 8-1.06B of the Standard Specifications (page 8-4) shall be added as follows:

8-1.06B Annual Holiday Closure. - At the option of the Engineer, the contractor may be required to suspend all work and activities during the City’s annual Holiday Closure in late December and early January of each year. No work shall be done during this suspension except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case, only with the prior written permission of the Engineer.

This suspension of work will be at no cost to the City. Working days will not be assessed during this suspension of work.

Section 8-1.07A – No Pay for Delay of the Standard Specifications shall be deleted in its entirety and replaced with the following Sections:

Section 8-1.07A – Contractor Caused Delay. – Should the progress of the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to City including legal fees and disbursements incurred by City (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Contractor and its surety hereunder or otherwise) or any damages or additional costs or expenses for which City may or shall become liable, the Contractor and its surety shall and does hereby agree to compensate City for and indemnify them against all such costs, expenses, damages and liability.

City, if it deems necessary, may direct the Contractor to work overtime and, if so directed, the Contractor shall work said overtime and, provided that the Contractor is not in default under any of the terms or provisions of this Contract or of any of the other Contract Documents, City will pay the Contractor for such actual additional wages paid, if any, at rates which have been approved by City plus taxes imposed by law on such additional wages, plus workers’ compensation insurance, liability insurance and levies on such additional wages if required to be paid by the Contractor to comply with Contractor’s obligations under this Contract.

If, however, the progress of the Work of of the Project be delayed by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractors or suppliers, then the Contractor shall, in addition to all of the other

obligations imposed by this Contract upon the Contractor in such case, and at its own cost and expense, work such overtime as may be necessary to make up for all time lost in the completion of the Work and of the Project due to such delay.

Section 8-1.07B – Delay Caused by Other. – Should the Contractor be delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Work by any cause including but not limited to any act, omission, neglect, negligence or default of City or by an employee, agent or representative of the City (other than by reason of the proper exercise of their respective rights, duties and obligations under the Contract Documents), or by damage caused by fire or other casualty or by the combined action of workers or by governmental directive or order in no wise chargeable to the Contractor, or by any extraordinary conditions arising out of war or government regulations, or by any other cause beyond the control of an NOT due to any fault, neglect, act or omission of the Contractor, its officers, agents, employees, subcontractors or suppliers, then except where the Contract has specific requirements at variance with the foregoing, in which case the requirements of the Contract shall govern-the Contractor shall be entitled to an extension of time for a period equivalent to the time lost by reason of any and all of the aforesaid causes; provided, however, that the Contractor shall not be entitled to any such extension of time unless the Contractor:

- (1) notifies City in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty eight (48) hours of the commencement thereof, AND
- (2) demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof.

Contractor acknowledges that provision of such notice is an essential condition precedent to Contractor's rights in connection with any such delays, obstructive hindrances or interferences to City ability to fully identify, and expeditiously, address and avoid such cause or causes, and, accordingly, Contractor expressly waives all rights with respect to any such cause or causes for which notice hereunder was not provided. Notwithstanding the foregoing, if the Contract is at variance with granting such time extension, then the provisions of the Contract shall control.

Section 8-1.07C – Damages for Compensable Delay. – The Contractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for an delay, obstruction, hindrance or interference to the Work over and beyond that which is specified in the Contract plus that which is specified by duly executed change orders.

In the event of delay in the Work that is within Section 7102 of the Public Contract Code, the Contractor shall be entitled to an extension of time and compensation for such delay in strict accordance with the provisions of this section. The extension of time and provision for compensation shall not be allowed unless the Contractor provides the City with written notice within forty eight (48) hours of the commencement of any such delay. The City must provide written approval of any extension of time, or payment of

compensation. No verbal approval, either express or implied, or any grant of time extension by City or its agents shall be binding upon City unless and until such approval is expressly ratified in writing.

Contractor's remedy for a 7102 Delay, in addition to the extension of time, shall be as follows, upon Contractor's demonstration that these costs were actually impacted by the 7102 Delay:

- (1) Field or on-site labor according to actual payroll data for the time of the 7102 Delay. No multipliers will be allowed unless previously approved in writing by the City;
- (2) Idle field equipment will be priced at a daily rate calculated from the manufacturer quoted or invoiced costs;
- (3) Idle field rental equipment will be priced at a daily rate calculated from the invoiced costs; and
- (4) Total mark up of items (1) through (3) above for overhead and profit, including all levels of subcontractors and Contractor combined, shall not exceed 20% cumulative. For the purposes of this section, overhead includes (1) all indirect labor such as management, supervision, engineer and consulting, drafting, estimating, secretarial and accounting; (2) all field office expenses, including office supplies and equipment; (3) insurance and bonds; and (4) all corporate office expenses.

In the event of delay in the Work which is not due to Section 8-1.07B "Delay by Others", or is not a 7102 Delay, City may direct that the work be accelerated by means of overtime, additional crews or additional shifts or resequencing of the Work. All such acceleration associated with an inexcusable delay, where the delay is attributable to the Contractor, shall be at no cost to the Owner. In the event of Section 8-1.07B "Delay by Others" or 7102 Delay, City may similarly direct acceleration and Contractor agrees to perform same on the basis of reimbursement of Direct cost plus a fee of five percent (5%) of such costs but expressly waives any other compensation therefore. In the event of any acceleration requested pursuant to this paragraph, Contractor shall provide promptly a plan including recommendations for, in Contractor's opinion, the most effective and economical acceleration.

Section 9-1.07C of the Standard Specifications (page 9-18) shall be added as follows:

9-1.07C Claims Certification. - All claims submitted by the contractor shall include the following personal certification:

"I, _____, BEING THE _____ (MUST BE AN OFFICER) OF _____ (GENERAL CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS

TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES.”

By: _____
Title

Section 9-1.04 Notice of Potential Claim, of the Standard Specifications shall be deleted in its entirety and replaced with the following:

9-1.04 Notice of Potential Claim.

Purpose: The intent of this section is that the Contractor bring disputes arising under the contract to the attention of the City at the earliest possible time in order that the matters may be resolved, if possible, or other appropriate action promptly be taken.

Definition: For purposes of this section, “dispute” means a disagreement between the Contractor and City over time or money or the performance of work shown or contemplated in the contract.

Application: The procedures set forth in this section shall apply to all disputes arising under the contract except for those disputes arising after the City’s issuance of the proposed final estimate, which shall be subject to procedures set forth in Section 9-107B, entitled “Final Payment and Claims.” The procedures set forth in this section shall be in addition to any other specified notice or protest requirements contained in any other provisions, including Sections 4-1.03A “Procedure and Protest”, Section 4-1.07 “Differing Site Conditions”, Section 8-1.07 “Liquidated Damages” and Section 8-1.10 “Utility and Non-Highway Facilities”. In the event of a conflict between the procedures set forth in this section and those set forth in any other section of the contract, the procedures set forth herein shall govern.

Failure to Follow Procedures/Bar to Pursuing Claim: The City will not consider any dispute subject to this section, or any claim based upon a dispute subject to this section, unless the Contractor has first complied with the procedures contained herein. Failure of the Contractor to conform to the specified dispute procedures shall constitute a failure to pursue diligently and exhaust the administrative procedures in the contract and shall operate as a bar to the Contractor being able to pursue claims under this contract.

Initial Notice of Potential Claim: The Contractor shall provide a signed, written initial notice of potential claim to the City within 5 days of the Contractor becoming aware of a dispute.

The initial notice of potential claim shall provide the nature and circumstances involved in the dispute, which shall remain consistent through the dispute. The Contractor shall submit the initial notice of potential claim on Form NPC-A (Initial Notice Of Potential Claim) furnished by the City and shall certify it with reference to the California

False Claims Act, Government Code Sections 12650-12655. The Contractor shall assign an exclusive identification number for each dispute, determined by chronological sequencing, based on the date of the dispute. The Contractor shall use the exclusive identification number on all notices, forms, correspondence and other documents referring to the dispute.

When the dispute involves the performance of work, the Contractor shall provide the City the opportunity to examine the site of the disputed work within 5 days from the date of the initial notice of potential claim. The Contractor shall proceed with the performance of contract work unless otherwise specified or directed by the City.

Throughout performance of any disputed work, the Contractor shall maintain records in conformance with **Section 9-1.03C "Records"** so that the records provide a clear distinction between the direct costs incurred in performing disputed work and direct costs incurred in performing undisputed work. The Contractor shall allow the City access to the Contractor's project records deemed necessary by the City to evaluate the potential claim within 20 days of the date of the City's written request.

Supplemental Notice of Potential Claim: Within 15 days of submitting the initial notice of potential claim, the Contractor shall provide to the City a signed, written supplemental notice of potential claim on Form NPC-B (Supplemental Notice of Potential Claim) furnished by the City. The supplemental notice of potential claim form shall identify the dispute by its unique tracking number and shall provide the following information.

- (A) The complete nature and circumstances of the dispute which results in the potential claim.
- (B) The contract provisions that provide the basis of claim.
- (C) The estimated cost of the potential claim, including an itemized breakdown of individual costs and how the estimate was determined.
- (D) A time impact analysis of the project progress schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of contract time is made.

The information provided in items A and B above shall provide the Contractor's complete reasoning for additional compensation or adjustments. If the estimate cost or effect on the scheduled completion date changes, the Contractor shall update information in items C and D above as soon as the change is recognized and submit this information to the City on a revised Form NPC-B.

The Contractor shall certify the supplemental notice of potential claim with reference to the California False Claims Act, Government Code Sections 12650-12655.

Full and Final Documentation of Potential Claim: The Contractor shall provide to the City a signed, written full and final documentation of potential claim on Form NPC-C (Full and Final Documentation of Potential Claim) furnished by the City within the applicable time frame: (1) for disputes involving work, within 30 days of the completion of the disputed work, and (2) for non-work related disputes, within 30 days of the submission of the supplemental notice of potential claim. The full and final documentation of potential claim shall identify the dispute by its unique tracking number and shall provide the following information:

- (A) A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of work affected by the dispute.
- (B) The specific provisions of the contract that support the potential claim and a statement of the reasons these provisions support and provide a basis for entitlement of the potential claim.
- (C) When additional monetary compensation is requested, the Contractor shall calculate the exact amount requested in conformance with Section 4-1.03 "Changes", Sections 8-1.07A to 8-1.07C of these Special Provisions, inclusive, Section 9-1.03, "Force Account Payment", and Section 8-1.09, "Right of Way Delays," including an itemized breakdown of individual costs. The Contractor shall segregate costs into the following cost categories:
 - 1. Labor -- A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested reimbursement of labor costs.
 - 2. Materials -- Invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information related to the requested reimbursement of material costs.
 - 3. Equipment -- Listing of detailed description (make, model, and serial number), hours of use, dates of use and equipment rates. Equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the affected work related to the dispute was performed.
 - 4. Other categories as specified by the Contractor or the City.
- (D) When an adjustment of contract time is requested, the Contractor shall provide the following information in conformance with Sections 8-1.07A to 8-1.07C, inclusive of these Special Provisions:
 - 1. The specific dates for which contract time is being requested.
 - 2. The specific reasons for entitlement to a contract time adjustment.
 - 3. The specific provisions of the contract that provide the basis for the requested contract time adjustment.
 - 4. A detailed time impact analysis of the project progress schedule. The time impact analysis shall show the effect of changes or disruptions on the scheduled completion date to demonstrate entitlement to a contract time adjustment.
- (E) The identification and copies of the Contractor's documents and the substance of oral communications that support the potential claim.

The Contractor shall certify the full and final documentation of the potential claim with reference to the California False Claims Act, Government Code Sections 12650-12655.

The Contractor shall include all pertinent information, references, arguments, and data to support the potential claim in the full and final documentation of potential claim. The City will not consider information submitted by the Contractor subsequent to the full and final documentation submittal. Information required in the full and final documentation of potential claim, as listed in items A to E above, that is not applicable to the dispute may be exempted as determined by the City. The City will not consider a full and final documentation of potential claim that does not have the same nature and circumstances, and basis of claim as those specified on the initial and supplemental notices of potential claim.

The City will evaluate the information presented in the full and final documentation of potential claim and provide a written response to the Contractor within 30 days of its receipt. The City's receipt of the full and final documentation of potential claim shall be evidenced by postal receipt or the City's written receipt if delivered by hand. If the Contractor submits the full and final documentation of potential claim after acceptance of the work by the Director, the City need not provide a written response.

Section 9-1.07B, "Final Payment and Claims," of the Standard Specifications shall be deleted in its entirety and replaced with the following.

9-1.07B Final Payment and Claims

Proposed Final Estimate: After acceptance of contract by the City, the City will make a proposed final estimate in writing of the total amount payable to the Contractor. The proposed final estimate will include an itemization of the total amount, segregated by contract item quantities, extra work and other basis for payment. It will also show each deduction made or to be made for prior payments and amounts to be retained by the City under the provisions of the contract. Prior estimates and payments shall be subject to correction in the proposed final estimate.

Contractor's Response to Proposed Final Estimate: The Contractor shall submit a written response to the proposed final estimate by no later than the close of business of the thirtieth (30th) day after receiving the proposed final estimate. If the thirtieth (30th) day falls on a Saturday, Sunday or legal holiday, then the Contractor shall submit the written response not later than the close of business of the next business day. ***The City must actually receive the Contractor's written response to the proposed final estimate within the above-referenced time period.*** The Contractor's receipt of the proposed final estimate shall be evidenced by postal receipt. The City's receipt of the Contractor's written approval or statement of claims shall be evidenced by postal receipt or the City's written receipt if delivered by hand.

Contractor's Failure to Timely Respond to Proposed Final Estimate: The parties agree that the Contractor's failure to respond to the proposed final estimate within the thirty-day time period set forth above shall be deemed Contractor's approval of the City's proposed final estimate and shall bar the Contractor from pursuing any claims.

Final Estimate: If the Contractor approves the City's proposed final estimate in its entirety or fails to respond within the specified period of 30 days, the City will issue a final estimate in writing in conformance with the proposed final estimate, and within 30 days after issuance of the final estimate shall cause the City to pay the entire sum found to be due. That final estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided in Section 9-1.03C, entitled "Records."

Semi-Final Estimate: If the Contractor timely responds to the proposed final estimate by asserting claims, the City will issue a semifinal estimate. The semifinal estimate will identify those sums that both the City and Contractor agree are **not** in dispute. Any other sums shall be considered to be sums that are in dispute. Within 30 days following City's issuance of the semifinal estimate, the City will pay the Contractor the sums that both parties agree are not in dispute, subject to any offsets that the City may have. The City shall not be under any obligation to pay out sums that are in dispute.

The semifinal estimate and corresponding payment of the sums not in dispute shall be conclusive and binding against both parties to the contract on each question relating to the amount of work done and the compensation payable therefore, except as otherwise provided in Section 9-1.03C, "Records".

Contractor's Written Statement of Claims: If the Contractor responds to the proposed final estimate by asserting claims, the Contractor shall submit with its response a written statement of claims. The Contractor shall provide its written statement of claims on Form SOC (Statement of Claims) supplied by the City and include the information required by the following subsections:

Disputes Arising Prior to Issuance of Proposed Final Estimate: Except for claims for overhead expenses, for any claims based on disputes that occurred prior to the issuance of the proposed final estimate, the Contractor shall include the following items of information for each claim:

- A. The exclusive identification number that corresponds to the supporting full and final documentation of potential claim submitted on Form NPC-C.
- B. The final amount of requested additional compensation and/or time extension to the contract.
- C. If the final amount of requested additional compensation is different than the amount of requested compensation included in the full and final documentation of potential claim, the Contractor shall state the reasons for the changed amount, the specific provisions of the contract which support the changed amount, and a statement of the reasons the provisions support and provide a basis for the changed amount.

Disputes Arising After Issuance of Proposed Final Estimate: Except for claims for overhead expenses, any claims based on disputes arising after issuance of the proposed final estimate shall be described in the Contractor's written statement of claims in sufficient detail to enable the City to ascertain the basis and amounts of those claims. The Contractor agrees to submit such claims on Form NPC-C with all of the supporting documentation and information required by Section 9-1.07A – “Notice of Potential Claim” for form NPC-C. The Contractor also agrees to include on Form SOC the following information for each claim:

- A. The exclusive identification number that corresponds to the supporting full and final documentation of potential claim submitted on Form NPC-C along with the Statement of Claims.
- B. The final amount of requested additional compensation and/or time extension to the contract.

Claims for Overhead Expenses: For unresolved claims for overhead expenses occurring before or after the issuance of the proposed final estimate, the Contractor agrees to include on Form SOC the following information for each overhead claim:

- A. An exclusive identification number that identifies the overhead claim as separate and unique from other outstanding claims.
- B. The final amount of requested additional compensation and/or time extension to the contract for overhead expenses.

The Contractor shall support and accompany the overhead claims with an audit report by an independent Certified Public Accountant. Omission of a supporting audit report of an independent Certified Public Accountant shall result in denial of the claim and shall be deemed as the Contractor's waiver of the potential claim and shall operate as a bar to Contractor being able to pursue the claim. Claims for overhead type expenses or costs shall be subject to audit by the City at its discretion. The costs of performing an audit examination and submitting the report shall be borne by the Contractor. The Certified Public Accountant's audit examination shall be performed in conformance with the requirements of the American Institute of Certified Public Accountants Attestation Standards. The audit examination and report shall depict the Contractor's project and company-wide financial records and shall specify the actual overall average daily rates for both field and home office overhead for the entire duration of the project, and whether the costs have been properly allocated. The audit examination and report shall determine if the rates of field and home office overhead are:

- A. For non-delay related claims: Allowable in conformance with the requirements in Section 4-1.03.1(A) “Overhead and Profit”
- B. For delay related overhead claims: Allowable in conformance with Sections 8-1.07A through 8-1.07C inclusive.
- C. Adequately supported by reliable documentation.
- D. Related solely to the project under examination.

Costs or expenses incurred by the City in reviewing or auditing claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

General Claim Conditions: If the Contractor's claim fails to provide an exclusive identification number or if there is a disparity in the provided exclusive identification number, the City will notify the Contractor of the omission or disparity. The Contractor shall have 15 days after receiving notification from the City to correct the omission or disparity. If after the 15 days has elapsed, there is still an omission or disparity of the exclusive identification number assigned to the claim, the City will assign the number.

The Contractor is not entitled to pursue, and the City may reject, any claim in which the Contractor failed to completely comply with the requirements of section 9-1.04, or, where applicable, the notice or protest requirements of Sections 4-1.03, "Changes," 4-1.07, "Differing Site Condition," 8-1.07, "Liquidated Damages," 8-1.10, "Utility and Non-Highway Facilities," and 9-1.04, "Notice of Potential Claim." Even where the Contractor complied with the applicable notice and protest requirements, the City will not consider any claim that has any of the following deficiencies:

- A. The claim does not have the same nature, circumstances, and basis as the corresponding full and final documentation of potential claim.
- B. The claim does not have a corresponding full and final documentation of potential claim.
- C. The claim for overhead expenses did not include the required audit report.
- D. The claim was not included in the written statement of claims.

The Contractor shall keep full and complete records of the costs and additional time incurred for work for which a claim for additional compensation is made. The City or designated claim investigators or auditors shall have access to those records and any other records as may be required by the City to determine the facts or contentions involved in the claims. Failure to permit access to those records shall be sufficient cause for denying the claims.

Contractor's Certification of Statement of Claims: The written statement of claims submitted by the Contractor shall be accompanied by a notarized certificate containing the following language:

"I, _____, BEING THE _____ (MUST BE AN OFFICER) OF (GENERAL CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE

AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES.”

By _____
Title

The Contractor’s failure to submit the notarized certificate will be sufficient cause for denying the claim.

City’s Response to Contractor’s Statement of Claims: If the Contractor files a timely written statement of claims in response to the proposed final estimate, the City will submit a claim response to the Contractor by hand delivery or deposit in the U.S. mail within 75 days of receipt by the City of the Contractors’ statement of claims. The claim response will delineate the City’s position on the Contractor’s claims. As well as rejecting or accepting any of the Contractor’s claims, the City’s response may propose compromises to of any of the claims.

Contractor’s Response to City’s Claim Response: The Contractor shall notify the City of whether it agrees and/or disagrees with the City’s response to the statement of claims. The notification must be received by the City not later than 15 days after the Contractor’s receipt of the City’s claim response. The Contractor’s failure to provide a notification within the 15-day time period shall constitute Contractor’s disagreement with the City claim response.

Final Determination of Claims: The final determination of claims, made by the City, will be sent to the Contractor by hand delivery or deposit in the U.S. mail. The City will then make and issue the City’s final estimate in writing and within 30 days thereafter the City will pay the entire sum, if any, found due thereon. That final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided in Section 9-1.03C, "Records,"

Pursuing Disputed Claims: After the parties exhaust the procedures set forth above, the parties may pursue whatever legal remedies are available to them with regard to resolving the claims that continue to be disputed, and the Contractor may invoke those dispute resolution procedures set forth in Part 4 of Chapter 14.06 of the San Jose Municipal Code that are applicable to this contract. Notwithstanding the foregoing, the legal remedies available to the parties are subject to Section 9-1.10 of these Standard Specifications.

BEGINNING OF WORK AND TIME OF COMPLETION

The Contractor shall diligently prosecute the contract to completion before the expiration of **90 CALENDAR DAYS** from the first chargeable day as set forth in the "Notice to Proceed." NO ADDITIONAL DAYS WILL BE GRANTED FOR INCLEMENT WEATHER OR CONDITIONS RESULTING IMMEDIATELY THEREFROM except as noted in Section 8-1.06 of the Special Provisions.

PROGRESS SCHEDULE

The Contractor shall provide the project progress schedule in the manner and timeframes specified in the attached technical specifications of this contract. This progress schedule shall be the basis for all schedule related changes to the contract and for all claims arising from the contract.

LIQUIDATED DAMAGES

The Contractor shall pay to the City of San Jose the sum of **\$250.00** per day for each and every day's delay in finishing the work in excess of the number of days prescribed above. The Contractor shall also pay the City of San Jose the sum of **\$100.00** per day for each and every day the Contractor fails to submit to the City the Progress Schedule as required by this Contract.

EQUALITY ASSURANCE

The Contractor shall comply with the Nondiscrimination / Nonpreferential Treatment requirements set forth in Attachment 1 and Attachment 3 pursuant to Chapter 4.08 of the City of San Jose Municipal Code. The Contractor shall comply with the Prevailing Wage requirements set forth in Attachment 5. Attachment 1, Attachment 3, and Attachment 5 are attached and are a part of these special provisions.

INSURANCE REQUIREMENTS

Attention is directed to Attachment 4, "Insurance Requirements", of these special provisions.

MEASUREMENT AND PAYMENT

Attention is directed to "Part 4" of all Division 1 Specification Sections. The Contractor shall comply with the instructions contained in this new part of the Division 1 specifications and agrees to

END OF AMENDMENTS

ATTACHMENT 1

ATTACHMENT 1

NONDISCRIMINATION / NONPREFERENTIAL TREATMENT APPLICABLE TO CONTRACTS FOR PUBLIC WORKS CONSTRUCTION PROJECTS

Statement of Purposes

It is the Policy of the City of San Jose that **no discrimination or preferences** shall be permitted in the subcontracting of the City of San Jose construction contracts. Studies have demonstrated that there has been a pattern of discrimination against certain minority groups and women by contractors in the subcontracting of public works contracts. All contractors shall fully comply with Chapter 4.08 of the San Jose Municipal Code and shall not discriminate against or grant preferential treatment to any subcontractor on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in the performance of the City of San Jose contracts. Any contractor who so discriminates or gives preferences shall be deemed not to be a responsible bidder in accordance with City of San Jose Charter Section 1217.

SECTION I -- REQUIREMENT

These provisions, entitled, "**NONDISCRIMINATION / NONPREFERENTIAL TREATMENT APPLICABLE TO CONTRACTS FOR PUBLIC WORKS CONSTRUCTION PROJECTS**" are incorporated in and made part of the Special Provisions.

1. ALL BIDDERS ARE REQUIRED TO SIGN THE FOLLOWING STATEMENT, AS PART OF THEIR BID PROPOSAL:

In listing subcontractors in this bid, I have not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. I understand that any such discrimination or preference is in violation of Chapter 4.08 of the Municipal Code.

SECTION II -- CONFLICT WITH APPLICABLE FEDERAL OR STATE LAW

In the event that a particular City public works contract is funded or required to be approved in whole or in part by the State or Federal government and any provision contained herein is inconsistent with any applicable state or federal statutes, rules or regulations, orders or controlling policies pertaining to such funding or approval, to the extent that any such provision is inconsistent, it shall not apply to the contract. To the extent a Federal project requires an MBE/WBE Program, the Program set forth in Resolution #67001 shall be applicable.

SECTION III -- VIOLATION OF SECTION

Be aware that any Prime Contractor who discriminates or gives preferences is in violation of Chapter 4.08 of the San Jose Municipal Code. Any such violation, in addition to all other remedies set forth in the Municipal Code, is further subject to the provisions of the San Jose Municipal Code, Chapter 4.10 of Title 4, Debarment of Contractors From City Contracts

ATTACHMENT 2
(not used)

ATTACHMENT 3

ATTACHMENT 3

CONTRACT PROVISIONS IMPLEMENTING CHAPTER 4.08 OF THE SAN JOSE MUNICIPAL CODE

In the performance of this Agreement:

1. Prohibition on Discrimination and Preferential Treatment.

Contractor shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by the Compliance Officer of the City, Contractor shall file, and cause any subcontractor to file, compliance reports with the Compliance Officer. Compliance reports shall be in the form and filed at such times as may be designated by the Compliance Officer. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Compliance Officer to determine whether Contractor or its subcontractor is complying with the nondiscrimination and nonpreference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

3. Failure to Comply With Nondiscrimination Provisions.

If the Compliance Officer determines that the Contractor has not complied with the nondiscrimination or nonpreference provisions of this Agreement, the City may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject Contractor and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

4. Subcontracts.

Contractor shall include provisions 1 through 3, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Compliance Officer, if the Compliance Officer determines that the Contractor has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the Contractor or other governmental agency are substantially the same as those imposed by the City.

ATTACHMENT 4

ATTACHMENT 4

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

D-1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) including products and completed operations, X, C, U (explosion, collapse, underground); and
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage also to include code 8 "hired autos" and code 9 "non-owned" autos.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

D-2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

D-3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

D-4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
- b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City.

D-5 Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

D-6 Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages. This proof of insurance shall then be mailed to: **Risk Management, Finance, CITY OF SAN JOSE 200 East Santa Clara Street , San Jose, CA 95113-1905**

D-7 Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

ATTACHMENT 5

ATTACHMENT 5

CONTRACT PROVISIONS FOR PREVAILING WAGES

PREVAILING WAGES

Attention is called to the fact that State of California Prevailing Wage Rate requirements apply to this project. Copies of the General Prevailing Wage Determinations made by the California Director of Industrial Relations are available at the Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San Jose CA 95113-1905 and the Office of the City Clerk, 200 East Santa Clara Street, 2nd Floor, City Hall Wing, San Jose CA 95113-1905. The General Prevailing Wage Determination is also available via the Internet at www.dir.ca.gov/DLSR/PWD. All questions regarding prevailing wage requirements are to be directed to the Office of Equality Assurance at 408-535-8430.

In the performance of this Agreement:

I. Standards of Responsibility: Prevailing Wages (Municipal Code 4.10.200)

The city requires in all of its procurement procedures that all persons who submit bids, proposals or offers to enter into a contract with the city to do so truthfully and in good faith, and shall not attempt to mislead the city with respect to the following including, but not limited to, records regarding the nature or quality of the work performed under the contract, payroll records, classification of employees on payroll records, and payment of prevailing wages where called for by the contract.

Please note the following classifications are not allowed on City of San Jose public works construction contracts:

Asbestos Removal Worker (Laborer)

Step I 0-1000 Hours

Step II 1001-4000 Hours

Carpet, Linoleum

Floor Covering Handler Less Than 3 Years

Floor Covering Handler Trainee, First 3 Months

Floor Covering Handler Trainee, Second 3 Months

Electrician

Material Handler, Second Six Months

Material Handler, First Six Months

Landscape Maintenance Laborer

Plumber

Underground Utility Tradesman

Landscape Tradesman I

Landscape Tradesman II

Construction Tradesman (Year 2)

Construction Tradesman (Year 3)

Construction Tradesman (Year 4)

Construction Tradesman (Year 5)

Slurry Seal Worker

Traffic Controlperson

Water Well Driller

Helper

II. Remedies For Contractor's Breach Of Prevailing Wage/Living Wage Provisions

A. General: Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement ("Document Provision"). Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
3. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose. It increases the ability of such workers to attain sustenance, decreases the amount of poverty, and reduces the amount of taxpayer funded social services in San Jose.
4. It increases competition by promoting a more level a more level playing field among contractors with regard to the wages paid to workers.

B. Withholding of Payment: Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Provision and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Prevailing Wage Provision.

In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Provision, is an express condition of the City's obligation to make each payment due the Contractor pursuant to this Contract. The City is not obligated to make payment due the contractor until contractor has performed all of its obligations under these provisions.

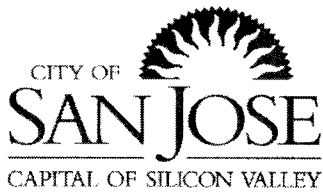
Any payment by the City, despite Contractor's failure to fully perform its obligations under these provisions, shall not be deemed to be a waiver of any other term or condition contained in this contract or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

C. Liquidated Damages For Breach Of Wage Provision: Contractor agrees its breach of the Wage Provision would cause the City damage by undermining the Goals, and the City's damage would not be remedied by contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

- D. Audit Rights: All Records or documents required to be kept pursuant to this contract to verify compliance with the Wage Provision shall be made available at no cost to the City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to the City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this contract.

ATTACHMENT 6



FORM NPC-A:
INITIAL NOTICE
OF POTENTIAL CLAIM

For City Use Only	
Received By:	On:

Department of Public Works

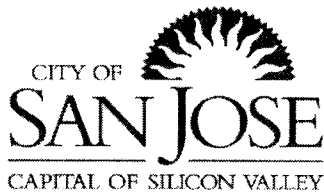
PROJECT:		CONTRACTOR:	
TO: (City representative)	CONTRACT No.: (Issued by City)	DATE OF ISSUE: (by contractor)	NPC-I.D. #: (Assign Unique NPC #)
<i>NOTICE: This form is to be used in conjunction with Forms NPC-B, NPC-C & SOC per the Special Provisions Section 9-1.04 of this contract and be assigned a sequential numerical ID number by the contractor in accordance with that Section. All related forms shall use the corresponding NPC ID # for the below listed potential claim. Use of this form alone shall not constitute compliance with the provisions of the contract requirements for claims.</i>			
<i>This is the Initial Notice Potential Claim for additional compensation submitted as required under the provisions of Section 9-1-04 "Notice of Potential Claim" of the Special Provisions of the Specifications. The act of the engineer, or his/her failure to act, or the event, thing occurrence, or other cause giving rise to the potential claim occurred on :</i>			Event Date:

The particular nature and circumstances of this potential claim are described as follows:

The undersigned originator (the Contractor) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agree that this potential claim to be further considered unless resolved, must be restated as a claim in response to the City's proposed final estimate in accordance with Section 9-1.07B of the Special Provisions of the Specifications.

PRIME CONTRACTOR

(Authorized Representative)



FORM NPC-B:

**SUPPLEMENTAL NOTICE
OF POTENTIAL CLAIM**

For City Use Only	
Received By:	On:

Department of Public Works

PROJECT:		CONTRACTOR:	
TO: (City representative)	CONTRACT No.: (Issued by City)	DATE OF ISSUE: (by contractor)	NPC-I.D. #: (Assign Unique NPC #)
<i>This is a the Supplemental Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1-04 "Notice of Potential Claim" of the Special Provisions of the Specifications. The act of the engineer, or his/her failure to act, or the event, thing occurrence, or other cause giving rise to the potential claim occurred on :</i>			Event Date:

The particular nature and circumstances of this potential claim are described in detail as follows:
(attach additional sheets as needed)

The reasons for which I believe additional compensation may be due are:
(attach additional sheets as needed)

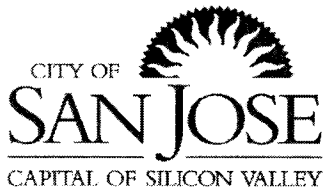
The nature of the costs involved and the amount of the potential claim are described as follows:
(If accurate cost figures are not available, provide an estimate, or describe the types of expenses involved.)
(attach additional sheets as needed)

A time impact analysis of the disputed disruption has been performed using the project progress schedule and is attached hereto. The affect on the scheduled project completion date is as follows: (attach additional sheets as needed)

The undersigned originator (the Contractor) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agree that this potential claim to be further considered unless resolve, must be restated as a claim in response to the City's proposed final estimate in accordance with Section 9-1.07B of the Special Provisions of the Specifications.

PRIME CONTRACTOR

(Authorized Representative)



FORM NPC-C:

**FULL AND FINAL DOCUMENTATION
OF POTENTIAL CLAIM**

For City Use Only	
Received By:	On:

Department of Public Works

PROJECT:		CONTRACTOR:	
TO: (City representative)	CONTRACT No.: (Issued by City)	DATE OF ISSUE: (by contractor)	NPC-I.D. #: (Assign Unique NPC #)
<i>This is a the Full and Final Documentation Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1-04 "Notice of Potential Claim" of the Special Provisions of the Specifications. The act of the engineer, or his/her failure to act, or the event, thing occurrence, or other cause giving rise to the potential claim occurred on :</i>			Event Date:

The complete and factual narration of events which fully describe the nature and circumstances that caused the dispute or disagreement and potential claim are attached hereto. (attach additional sheets as needed)

The basis of this claim including all relevant contract provisions and a statement of the reasons these provisions support and provide basis for entitlement of the potential claim are attached hereto. (attach additional sheets as needed)

The identification and copies of any documents and substance of any oral communication that support the potential claim are attached hereto. (attach additional sheets as needed.)

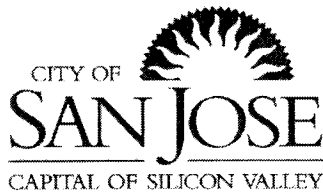
The exact dollar amount requested and an itemized breakdown of individual costs segregated by labor, materials, equipment and other are attached. (attach additional sheets as needed)

The exact amount of any time adjustment requested including justification thereof and time impact analysis using the project progress schedule are attached hereto. (attach additional sheets as needed)

The undersigned originator (the Contractor) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agree that this potential claim to be further considered unless resolve, must be restated as a claim in response to the City's proposed final estimate in accordance with Section 9-1.07B of the Special Provisions of the Specifications.

PRIME CONTRACTOR

(Authorized Representative)



FORM SOC:
STATEMENT OF CLAIMS

For City Use Only	
Received By: _____	On: _____

Department of Public Works

PROJECT:		CONTRACTOR:	
TO:	CONTRACT No.:	DATE OF ISSUE:	PAGE ____ of ____
(City representative)	(Issued by City)	(by Contractor)	(add additional pages as needed))

NOTICE: This form is to be used in conjunction with **Forms NPC-A, NPC-B & NPC-C** per the Special Provisions **Section 9-1.04 "Notice of Potential Claims"** and in conformance with **Section 9-1.07B "Final Payment and Claims"** of this contract. Use of this form alone shall not constitute compliance with the provisions of the contract requirements for claims. For each claim listed below, include the unique Notice of Potential Claim ID# ("NPC-ID#"), a brief description, the additional compensation and/or time extension being claimed and whether or not this claim differs from that originally issued on form NPC-C. For each claim, attach the corresponding form NPC-C. For claims for overhead or other disputes that occur after the issuance of the proposed final estimate, submit full and final documentation of such claims on a new form NPC-C attach to this statement and tabulate it below.

Claim #:	NPC-ID #:	Claim Description:	Compensation:	Time Extension:	Changed from NPC-C (Y/N)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
Sub-Total: [From any additional Form(s)]					
Total Claimed: (additional compensation and time extension)			\$	Days	

The undersigned originator (the Contractor) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agree that this potential claim to be further considered unless resolve, must be restated as a claim in response to the City's proposed final estimate in accordance with Section 9-1.07B of the Special Provisions of the Specifications.

PRIME CONTRACTOR

(Authorized Representative)